

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 674

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 651, ~~680~~, and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, and 1279 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 674, as amended, Negrete McLeod. Healing arts.

(1) Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

~~(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status on a specified name tag. However, existing law exempts from this requirement a health care practitioner, in a practice or office, whose license is prominently displayed.~~

~~This bill would delete that exemption and would instead authorize a health care practitioner, in a practice or office, to disclose his or her name and his or her type of license verbally.~~

~~(3)~~

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by July 1, 2010, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

~~(4)~~

(3) Existing law requires the board to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

~~(5)~~

(4) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations.

This bill would include, among those specified aspects, the submission for approval by an accrediting agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined, and assisted reproduction technology treatments.

~~(6)~~

(5) Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a

setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

~~(7)~~

(6) Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

~~(8)~~

(7) Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements, and the bill would require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

~~(9)~~

(8) Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

~~(10)~~

(9) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would require the department, when conducting an inspection of an acute care hospital, to inspect the peer review process utilized by the hospital.

(11)

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 651 of the Business and Professions Code
2 is amended to read:

3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely
8 to induce, directly or indirectly, the rendering of professional
9 services or furnishing of products in connection with the
10 professional practice or business for which he or she is licensed.

11 A “public communication” as used in this section includes, but is
12 not limited to, communication by means of mail, television, radio,
13 motion picture, newspaper, book, list or directory of healing arts
14 practitioners, Internet, or other electronic communication.

15 (b) A false, fraudulent, misleading, or deceptive statement,
16 claim, or image includes a statement or claim that does any of the
17 following:

18 (1) Contains a misrepresentation of fact.

19 (2) Is likely to mislead or deceive because of a failure to disclose
20 material facts.

21 (3) (A) Is intended or is likely to create false or unjustified
22 expectations of favorable results, including the use of any
23 photograph or other image that does not accurately depict the
24 results of the procedure being advertised or that has been altered
25 in any manner from the image of the actual subject depicted in the
26 photograph or image.

1 (B) Use of any photograph or other image of a model without
2 clearly stating in a prominent location in easily readable type the
3 fact that the photograph or image is of a model is a violation of
4 subdivision (a). For purposes of this paragraph, a model is anyone
5 other than an actual patient, who has undergone the procedure
6 being advertised, of the licensee who is advertising for his or her
7 services.

8 (C) Use of any photograph or other image of an actual patient
9 that depicts or purports to depict the results of any procedure, or
10 presents “before” and “after” views of a patient, without specifying
11 in a prominent location in easily readable type size what procedures
12 were performed on that patient is a violation of subdivision (a).
13 Any “before” and “after” views (i) shall be comparable in
14 presentation so that the results are not distorted by favorable poses,
15 lighting, or other features of presentation, and (ii) shall contain a
16 statement that the same “before” and “after” results may not occur
17 for all patients.

18 (4) Relates to fees, other than a standard consultation fee or a
19 range of fees for specific types of services, without fully and
20 specifically disclosing all variables and other material factors.

21 (5) Contains other representations or implications that in
22 reasonable probability will cause an ordinarily prudent person to
23 misunderstand or be deceived.

24 (6) Makes a claim either of professional superiority or of
25 performing services in a superior manner, unless that claim is
26 relevant to the service being performed and can be substantiated
27 with objective scientific evidence.

28 (7) Makes a scientific claim that cannot be substantiated by
29 reliable, peer reviewed, published scientific studies.

30 (8) Includes any statement, endorsement, or testimonial that is
31 likely to mislead or deceive because of a failure to disclose material
32 facts.

33 (c) Any price advertisement shall be exact, without the use of
34 phrases, including, but not limited to, “as low as,” “and up,”
35 “lowest prices,” or words or phrases of similar import. Any
36 advertisement that refers to services, or costs for services, and that
37 uses words of comparison shall be based on verifiable data
38 substantiating the comparison. Any person so advertising shall be
39 prepared to provide information sufficient to establish the accuracy
40 of that comparison. Price advertising shall not be fraudulent,

1 deceitful, or misleading, including statements or advertisements
2 of bait, discount, premiums, gifts, or any statements of a similar
3 nature. In connection with price advertising, the price for each
4 product or service shall be clearly identifiable. The price advertised
5 for products shall include charges for any related professional
6 services, including dispensing and fitting services, unless the
7 advertisement specifically and clearly indicates otherwise.

8 (d) Any person so licensed shall not compensate or give anything
9 of value to a representative of the press, radio, television, or other
10 communication medium in anticipation of, or in return for,
11 professional publicity unless the fact of compensation is made
12 known in that publicity.

13 (e) Any person so licensed may not use any professional card,
14 professional announcement card, office sign, letterhead, telephone
15 directory listing, medical list, medical directory listing, or a similar
16 professional notice or device if it includes a statement or claim
17 that is false, fraudulent, misleading, or deceptive within the
18 meaning of subdivision (b).

19 (f) Any person so licensed who violates this section is guilty of
20 a misdemeanor. A bona fide mistake of fact shall be a defense to
21 this subdivision, but only to this subdivision.

22 (g) Any violation of this section by a person so licensed shall
23 constitute good cause for revocation or suspension of his or her
24 license or other disciplinary action.

25 (h) Advertising by any person so licensed may include the
26 following:

27 (1) A statement of the name of the practitioner.

28 (2) A statement of addresses and telephone numbers of the
29 offices maintained by the practitioner.

30 (3) A statement of office hours regularly maintained by the
31 practitioner.

32 (4) A statement of languages, other than English, fluently spoken
33 by the practitioner or a person in the practitioner's office.

34 (5) (A) A statement that the practitioner is certified by a private
35 or public board or agency or a statement that the practitioner limits
36 his or her practice to specific fields.

37 (i) For the purposes of this section, a dentist licensed under
38 Chapter 4 (commencing with Section 1600) may not hold himself
39 or herself out as a specialist, or advertise membership in or
40 specialty recognition by an accrediting organization, unless the

1 practitioner has completed a specialty education program approved
2 by the American Dental Association and the Commission on Dental
3 Accreditation, is eligible for examination by a national specialty
4 board recognized by the American Dental Association, or is a
5 diplomate of a national specialty board recognized by the American
6 Dental Association.

7 (ii) A dentist licensed under Chapter 4 (commencing with
8 Section 1600) shall not represent to the public or advertise
9 accreditation either in a specialty area of practice or by a board
10 not meeting the requirements of clause (i) unless the dentist has
11 attained membership in or otherwise been credentialed by an
12 accrediting organization that is recognized by the board as a bona
13 fide organization for that area of dental practice. In order to be
14 recognized by the board as a bona fide accrediting organization
15 for a specific area of dental practice other than a specialty area of
16 dentistry authorized under clause (i), the organization shall
17 condition membership or credentialing of its members upon all of
18 the following:

19 (I) Successful completion of a formal, full-time advanced
20 education program that is affiliated with or sponsored by a
21 university based dental school and is beyond the dental degree at
22 a graduate or postgraduate level.

23 (II) Prior didactic training and clinical experience in the specific
24 area of dentistry that is greater than that of other dentists.

25 (III) Successful completion of oral and written examinations
26 based on psychometric principles.

27 (iii) Notwithstanding the requirements of clauses (i) and (ii), a
28 dentist who lacks membership in or certification, diplomate status,
29 other similar credentials, or completed advanced training approved
30 as bona fide either by an American Dental Association recognized
31 accrediting organization or by the board, may announce a practice
32 emphasis in any other area of dental practice only if the dentist
33 incorporates in capital letters or some other manner clearly
34 distinguishable from the rest of the announcement, solicitation, or
35 advertisement that he or she is a general dentist.

36 (iv) A statement of certification by a practitioner licensed under
37 Chapter 7 (commencing with Section 3000) shall only include a
38 statement that he or she is certified or eligible for certification by
39 a private or public board or parent association recognized by that
40 practitioner's licensing board.

1 (B) A physician and surgeon licensed under Chapter 5
2 (commencing with Section 2000) by the Medical Board of
3 California may include a statement that he or she limits his or her
4 practice to specific fields, but shall not include a statement that he
5 or she is certified or eligible for certification by a private or public
6 board or parent association, including, but not limited to, a
7 multidisciplinary board or association, unless that board or
8 association is (i) an American Board of Medical Specialties
9 member board, (ii) a board or association with equivalent
10 requirements approved by that physician and surgeon's licensing
11 board, or (iii) a board or association with an Accreditation Council
12 for Graduate Medical Education approved postgraduate training
13 program that provides complete training in that specialty or
14 subspecialty. A physician and surgeon licensed under Chapter 5
15 (commencing with Section 2000) by the Medical Board of
16 California who is certified by an organization other than a board
17 or association referred to in clause (i), (ii), or (iii) shall not use the
18 term "board certified" in reference to that certification, unless the
19 physician and surgeon is also licensed under Chapter 4
20 (commencing with Section 1600) and the use of the term "board
21 certified" in reference to that certification is in accordance with
22 subparagraph (A). A physician and surgeon licensed under Chapter
23 5 (commencing with Section 2000) by the Medical Board of
24 California who is certified by a board or association referred to in
25 clause (i), (ii), or (iii) shall not use the term "board certified" unless
26 the full name of the certifying board is also used and given
27 comparable prominence with the term "board certified" in the
28 statement.

29 For purposes of this subparagraph, a "multidisciplinary board
30 or association" means an educational certifying body that has a
31 psychometrically valid testing process, as determined by the
32 Medical Board of California, for certifying medical doctors and
33 other health care professionals that is based on the applicant's
34 education, training, and experience.

35 For purposes of the term "board certified," as used in this
36 subparagraph, the terms "board" and "association" mean an
37 organization that is an American Board of Medical Specialties
38 member board, an organization with equivalent requirements
39 approved by a physician and surgeon's licensing board, or an
40 organization with an Accreditation Council for Graduate Medical

1 Education approved postgraduate training program that provides
2 complete training in a specialty or subspecialty.

3 The Medical Board of California shall adopt regulations to
4 establish and collect a reasonable fee from each board or
5 association applying for recognition pursuant to this subparagraph.
6 The fee shall not exceed the cost of administering this
7 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
8 Statutes of 1990, this subparagraph shall become operative July
9 1, 1993. However, an administrative agency or accrediting
10 organization may take any action contemplated by this
11 subparagraph relating to the establishment or approval of specialist
12 requirements on and after January 1, 1991.

13 (C) A doctor of podiatric medicine licensed under Chapter 5
14 (commencing with Section 2000) by the Medical Board of
15 California may include a statement that he or she is certified or
16 eligible or qualified for certification by a private or public board
17 or parent association, including, but not limited to, a
18 multidisciplinary board or association, if that board or association
19 meets one of the following requirements: (i) is approved by the
20 Council on Podiatric Medical Education, (ii) is a board or
21 association with equivalent requirements approved by the
22 California Board of Podiatric Medicine, or (iii) is a board or
23 association with the Council on Podiatric Medical Education
24 approved postgraduate training programs that provide training in
25 podiatric medicine and podiatric surgery. A doctor of podiatric
26 medicine licensed under Chapter 5 (commencing with Section
27 2000) by the Medical Board of California who is certified by a
28 board or association referred to in clause (i), (ii), or (iii) shall not
29 use the term “board certified” unless the full name of the certifying
30 board is also used and given comparable prominence with the term
31 “board certified” in the statement. A doctor of podiatric medicine
32 licensed under Chapter 5 (commencing with Section 2000) by the
33 Medical Board of California who is certified by an organization
34 other than a board or association referred to in clause (i), (ii), or
35 (iii) shall not use the term “board certified” in reference to that
36 certification.

37 For purposes of this subparagraph, a “multidisciplinary board
38 or association” means an educational certifying body that has a
39 psychometrically valid testing process, as determined by the
40 California Board of Podiatric Medicine, for certifying doctors of

1 podiatric medicine that is based on the applicant's education,
2 training, and experience. For purposes of the term "board certified,"
3 as used in this subparagraph, the terms "board" and "association"
4 mean an organization that is a Council on Podiatric Medical
5 Education approved board, an organization with equivalent
6 requirements approved by the California Board of Podiatric
7 Medicine, or an organization with a Council on Podiatric Medical
8 Education approved postgraduate training program that provides
9 training in podiatric medicine and podiatric surgery.

10 The California Board of Podiatric Medicine shall adopt
11 regulations to establish and collect a reasonable fee from each
12 board or association applying for recognition pursuant to this
13 subparagraph, to be deposited in the State Treasury in the Podiatry
14 Fund, pursuant to Section 2499. The fee shall not exceed the cost
15 of administering this subparagraph.

16 (6) A statement that the practitioner provides services under a
17 specified private or public insurance plan or health care plan.

18 (7) A statement of names of schools and postgraduate clinical
19 training programs from which the practitioner has graduated,
20 together with the degrees received.

21 (8) A statement of publications authored by the practitioner.

22 (9) A statement of teaching positions currently or formerly held
23 by the practitioner, together with pertinent dates.

24 (10) A statement of his or her affiliations with hospitals or
25 clinics.

26 (11) A statement of the charges or fees for services or
27 commodities offered by the practitioner.

28 (12) A statement that the practitioner regularly accepts
29 installment payments of fees.

30 (13) Otherwise lawful images of a practitioner, his or her
31 physical facilities, or of a commodity to be advertised.

32 (14) A statement of the manufacturer, designer, style, make,
33 trade name, brand name, color, size, or type of commodities
34 advertised.

35 (15) An advertisement of a registered dispensing optician may
36 include statements in addition to those specified in paragraphs (1)
37 to (14), inclusive, provided that any statement shall not violate
38 subdivision (a), (b), (c), or (e) or any other section of this code.

39 (16) A statement, or statements, providing public health
40 information encouraging preventative or corrective care.

1 (17) Any other item of factual information that is not false,
2 fraudulent, misleading, or likely to deceive.

3 (i) (1) Advertising by the following licensees shall include the
4 designations as follows:

5 (A) Advertising by a chiropractor licensed under Chapter 2
6 (commencing with Section 1000) shall include the designation
7 “DC” immediately following the chiropractor’s name.

8 (B) Advertising by a dentist licensed under Chapter 4
9 (commencing with Section 1600) shall include the designation
10 “DDS” *or* “DMD” immediately following the dentist’s name.

11 (C) Advertising by a physician and surgeon licensed under
12 Chapter 5 (commencing with Section 2000) shall include the
13 designation “MD” immediately following the physician and
14 surgeon’s name.

15 (D) Advertising by an osteopathic physician and surgeon
16 certified under Article 21 (commencing with Section 2450) shall
17 include the designation “DO” immediately following the
18 osteopathic physician and surgeon’s name.

19 (E) Advertising by a podiatrist certified under Article 22
20 (commencing with Section 2460) of Chapter 5 shall include the
21 designation “DPM” immediately following the podiatrist’s name.

22 (F) Advertising by a registered nurse licensed under Chapter 6
23 (commencing with Section 2700) shall include the designation
24 “RN” immediately following the registered nurse’s name.

25 (G) Advertising by a licensed vocational nurse under Chapter
26 6.5 (commencing with Section 2840) shall include the designation
27 “LVN” immediately following the licensed vocational nurse’s
28 name.

29 (H) Advertising by a psychologist licensed under Chapter 6.6
30 (commencing with Section 2900) shall include the designation
31 “Ph.D.” immediately following the psychologist’s name.

32 (I) Advertising by an optometrist licensed under Chapter 7
33 (commencing with Section 3000) shall include the designation
34 “OD” immediately following the optometrist’s name.

35 (J) Advertising by a physician assistant licensed under Chapter
36 7.7 (commencing with Section 3500) shall include the designation
37 “PA” immediately following the physician assistant’s name.

38 (K) Advertising by a naturopathic doctor licensed under Chapter
39 8.2 (commencing with Section 3610) shall include the designation
40 “ND” immediately following the naturopathic doctor’s name.

(2) For purposes of this subdivision, “advertisement” includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.

(3) Advertisements do not include any of the following:

(A) A medical directory released by a health care service plan or a health insurer.

(B) A billing statement from a health care practitioner to a patient.

(C) An appointment reminder from a health care practitioner to a patient.

(4) This subdivision shall not apply until January 1, 2011, to any advertisement that is published annually and prior to July 1, 2010.

(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of

1 onerous disclosure requirements. However, any member of a board
2 or committee acting in good faith in the adoption or enforcement
3 of any regulation shall be deemed to be acting as an agent of the
4 state.

5 (k) The Attorney General shall commence legal proceedings in
6 the appropriate forum to enjoin advertisements disseminated or
7 about to be disseminated in violation of this section and seek other
8 appropriate relief to enforce this section. Notwithstanding any
9 other provision of law, the costs of enforcing this section to the
10 respective licensing boards or committees may be awarded against
11 any licensee found to be in violation of any provision of this
12 section. This shall not diminish the power of district attorneys,
13 county counsels, or city attorneys pursuant to existing law to seek
14 appropriate relief.

15 (l) A physician and surgeon or doctor of podiatric medicine
16 licensed pursuant to Chapter 5 (commencing with Section 2000)
17 by the Medical Board of California who knowingly and
18 intentionally violates this section may be cited and assessed an
19 administrative fine not to exceed ten thousand dollars (\$10,000)
20 per event. Section 125.9 shall govern the issuance of this citation
21 and fine except that the fine limitations prescribed in paragraph
22 (3) of subdivision (b) of Section 125.9 shall not apply to a fine
23 under this subdivision.

24 ~~SEC. 2. Section 680 of the Business and Professions Code is~~
25 ~~amended to read:~~

26 ~~680. (a) Except as otherwise provided in this section, a health~~
27 ~~care practitioner shall disclose, while working, his or her name~~
28 ~~and the practitioner's type of license, as granted by this state, on~~
29 ~~a name tag in at least 18-point type. A health care practitioner in~~
30 ~~a practice or office may opt to disclose this information verbally.~~
31 ~~If a health care practitioner or a licensed clinical social worker is~~
32 ~~working in a psychiatric setting or in a setting that is not licensed~~
33 ~~by the state, the employing entity or agency shall have the~~
34 ~~discretion to make an exception from the name tag requirement~~
35 ~~for individual safety or therapeutic concerns. In the interest of~~
36 ~~public safety and consumer awareness, it shall be unlawful for any~~
37 ~~person to use the title "nurse" in reference to himself or herself~~
38 ~~and in any capacity, except for an individual who is a registered~~
39 ~~nurse or a licensed vocational nurse, or as otherwise provided in~~

1 Section 2800. Nothing in this section shall prohibit a certified nurse
2 assistant from using his or her title.

3 ~~(b) Facilities licensed by the State Department of Social~~
4 ~~Services, the State Department of Mental Health, or the State~~
5 ~~Department of Public Health shall develop and implement policies~~
6 ~~to ensure that health care practitioners providing care in those~~
7 ~~facilities are in compliance with subdivision (a). The State~~
8 ~~Department of Social Services, the State Department of Mental~~
9 ~~Health, and the State Department of Public Health shall verify~~
10 ~~through periodic inspections that the policies required pursuant to~~
11 ~~subdivision (a) have been developed and implemented by the~~
12 ~~respective licensed facilities.~~

13 ~~(c) For purposes of this article, "health care practitioner" means~~
14 ~~any person who engages in acts that are the subject of licensure~~
15 ~~or regulation under this division or under any initiative act referred~~
16 ~~to in this division.~~

17 ~~SEC. 3.~~

18 *SEC. 2.* Section 2023.5 of the Business and Professions Code
19 is amended to read:

20 2023.5. (a) The board, in conjunction with the Board of
21 Registered Nursing, and in consultation with the Physician
22 Assistant Committee and professionals in the field, shall review
23 issues and problems surrounding the use of laser or intense light
24 pulse devices for elective cosmetic procedures by physicians and
25 surgeons, nurses, and physician assistants. The review shall include,
26 but need not be limited to, all of the following:

- 27 (1) The appropriate level of physician supervision needed.
28 (2) The appropriate level of training to ensure competency.
29 (3) Guidelines for standardized procedures and protocols that
30 address, at a minimum, all of the following:
31 (A) Patient selection.
32 (B) Patient education, instruction, and informed consent.
33 (C) Use of topical agents.
34 (D) Procedures to be followed in the event of complications or
35 side effects from the treatment.

36 (E) Procedures governing emergency and urgent care situations.

37 (b) On or before January 1, 2009, the board and the Board of
38 Registered Nursing shall promulgate regulations to implement
39 changes determined to be necessary with regard to the use of laser

1 or intense pulse light devices for elective cosmetic procedures by
2 physicians and surgeons, nurses, and physician assistants.

3 (c) On or before July 1, 2010, the board shall adopt regulations
4 regarding the appropriate level of physician availability needed
5 within clinics or other settings using laser or intense pulse light
6 devices for elective cosmetic procedures. However, these
7 regulations shall not apply to laser or intense pulse light devices
8 approved by the federal Food and Drug Administration for
9 over-the-counter use by a health care practitioner or by an
10 unlicensed person on himself or herself.

11 ~~SEC. 4.~~

12 *SEC. 3.* Section 2027.5 is added to the Business and Professions
13 Code, to read:

14 2027.5. The board shall post on its Internet Web site an
15 easy-to-understand factsheet to educate the public about cosmetic
16 surgery and procedures, including their risks. Included with the
17 factsheet shall be a comprehensive list of questions for patients to
18 ask their physician and surgeon regarding cosmetic surgery.

19 ~~SEC. 5.~~

20 *SEC. 4.* Section 1248 of the Health and Safety Code is amended
21 to read:

22 1248. For purposes of this chapter, the following definitions
23 shall apply:

24 (a) "Division" means the Medical Board of California. All
25 references in this chapter to the division, the Division of Licensing
26 of the Medical Board of California, or the Division of Medical
27 Quality shall be deemed to refer to the Medical Board of California
28 pursuant to Section 2002 of the Business and Professions Code.

29 (b) (1) "Outpatient setting" means any facility, clinic,
30 unlicensed clinic, center, office, or other setting that is not part of
31 a general acute care facility, as defined in Section 1250, and where
32 anesthesia, except local anesthesia or peripheral nerve blocks, or
33 both, is used in compliance with the community standard of
34 practice, in doses that, when administered have the probability of
35 placing a patient at risk for loss of the patient's life-preserving
36 protective reflexes. ~~"Outpatient~~

37 (2) "*Outpatient setting*" also means facilities that offer in vitro
38 fertilization, as defined in subdivision (b) of Section 1374.55, or
39 facilities that offer assisted reproduction technology treatments.

40 ~~"Outpatient~~

1 (3) “*Outpatient setting*” does not include, among other settings,
2 any setting where anxiolytics and analgesics are administered,
3 when done so in compliance with the community standard of
4 practice, in doses that do not have the probability of placing the
5 patient at risk for loss of the patient’s life-preserving protective
6 reflexes.

7 (c) “Accreditation agency” means a public or private
8 organization that is approved to issue certificates of accreditation
9 to outpatient settings by the board pursuant to Sections 1248.15
10 and 1248.4.

11 ~~SEC. 6.~~

12 *SEC. 5.* Section 1248.15 of the Health and Safety Code is
13 amended to read:

14 1248.15. (a) The board shall adopt standards for accreditation
15 and, in approving accreditation agencies to perform accreditation
16 of outpatient settings, shall ensure that the certification program
17 shall, at a minimum, include standards for the following aspects
18 of the settings’ operations:

19 (1) Outpatient setting allied health staff shall be licensed or
20 certified to the extent required by state or federal law.

21 (2) (A) Outpatient settings shall have a system for facility safety
22 and emergency training requirements.

23 (B) There shall be onsite equipment, medication, and trained
24 personnel to facilitate handling of services sought or provided and
25 to facilitate handling of any medical emergency that may arise in
26 connection with services sought or provided.

27 (C) In order for procedures to be performed in an outpatient
28 setting as defined in Section 1248, the outpatient setting shall do
29 one of the following:

30 (i) Have a written transfer agreement with a local accredited or
31 licensed acute care hospital, approved by the facility’s medical
32 staff.

33 (ii) Permit surgery only by a licensee who has admitting
34 privileges at a local accredited or licensed acute care hospital, with
35 the exception that licensees who may be precluded from having
36 admitting privileges by their professional classification or other
37 administrative limitations, shall have a written transfer agreement
38 with licensees who have admitting privileges at local accredited
39 or licensed acute care hospitals.

1 (D) Submission for approval by an accrediting agency of a
2 detailed procedural plan for handling medical emergencies that
3 shall be reviewed at the time of accreditation. No reasonable plan
4 shall be disapproved by the accrediting agency.

5 (E) Submission for approval by an accrediting agency at the
6 time of accreditation of a detailed plan, standardized procedures,
7 and protocols to be followed in the event of serious complications
8 or side effects from surgery that would place a patient at high risk
9 for injury or harm and to govern emergency and urgent care
10 situations.

11 (F) All physicians and surgeons transferring patients from an
12 outpatient setting shall agree to cooperate with the medical staff
13 peer review process on the transferred case, the results of which
14 shall be referred back to the outpatient setting, if deemed
15 appropriate by the medical staff peer review committee. If the
16 medical staff of the acute care facility determines that inappropriate
17 care was delivered at the outpatient setting, the acute care facility's
18 peer review outcome shall be reported, as appropriate, to the
19 accrediting body, the Health Care Financing Administration, the
20 State Department of Public Health, and the appropriate licensing
21 authority.

22 (3) The outpatient setting shall permit surgery by a dentist acting
23 within his or her scope of practice under Chapter 4 (commencing
24 with Section 1600) of Division 2 of the Business and Professions
25 Code or physician and surgeon, osteopathic physician and surgeon,
26 or podiatrist acting within his or her scope of practice under
27 Chapter 5 (commencing with Section 2000) of Division 2 of the
28 Business and Professions Code or the Osteopathic Initiative Act.
29 The outpatient setting may, in its discretion, permit anesthesia
30 service by a certified registered nurse anesthetist acting within his
31 or her scope of practice under Article 7 (commencing with Section
32 2825) of Chapter 6 of Division 2 of the Business and Professions
33 Code.

34 (4) Outpatient settings shall have a system for maintaining
35 clinical records.

36 (5) Outpatient settings shall have a system for patient care and
37 monitoring procedures.

38 (6) (A) Outpatient settings shall have a system for quality
39 assessment and improvement.

1 (B) Members of the medical staff and other practitioners who
2 are granted clinical privileges shall be professionally qualified and
3 appropriately credentialed for the performance of privileges
4 granted. The outpatient setting shall grant privileges in accordance
5 with recommendations from qualified health professionals, and
6 credentialing standards established by the outpatient setting.

7 (C) Clinical privileges shall be periodically reappraised by the
8 outpatient setting. The scope of procedures performed in the
9 outpatient setting shall be periodically reviewed and amended as
10 appropriate.

11 (7) Outpatient settings regulated by this chapter that have
12 multiple service locations governed by the same standards may
13 elect to have all service sites surveyed on any accreditation survey.
14 Organizations that do not elect to have all sites surveyed shall have
15 a sample, not to exceed 20 percent of all service sites, surveyed.
16 The actual sample size shall be determined by the board. The
17 accreditation agency shall determine the location of the sites to be
18 surveyed. Outpatient settings that have five or fewer sites shall
19 have at least one site surveyed. When an organization that elects
20 to have a sample of sites surveyed is approved for accreditation,
21 all of the organizations' sites shall be automatically accredited.

22 (8) Outpatient settings shall post the certificate of accreditation
23 in a location readily visible to patients and staff.

24 (9) Outpatient settings shall post the name and telephone number
25 of the accrediting agency with instructions on the submission of
26 complaints in a location readily visible to patients and staff.

27 (10) Outpatient settings shall have a written discharge criteria.

28 (b) Outpatient settings shall have a minimum of two staff
29 persons on the premises, one of whom shall either be a licensed
30 physician and surgeon or a licensed health care professional with
31 current certification in advanced cardiac life support (ACLS), as
32 long as a patient is present who has not been discharged from
33 supervised care. Transfer to an unlicensed setting of a patient who
34 does not meet the discharge criteria adopted pursuant to paragraph
35 (10) of subdivision (a) shall constitute unprofessional conduct.

36 (c) An accreditation agency may include additional standards
37 in its determination to accredit outpatient settings if these are
38 approved by the board to protect the public health and safety.

39 (d) No accreditation standard adopted or approved by the board,
40 and no standard included in any certification program of any

1 accreditation agency approved by the board, shall serve to limit
2 the ability of any allied health care practitioner to provide services
3 within his or her full scope of practice. Notwithstanding this or
4 any other provision of law, each outpatient setting may limit the
5 privileges, or determine the privileges, within the appropriate scope
6 of practice, that will be afforded to physicians and allied health
7 care practitioners who practice at the facility, in accordance with
8 credentialing standards established by the outpatient setting in
9 compliance with this chapter. Privileges may not be arbitrarily
10 restricted based on category of licensure.

11 *(e) The board may adopt standards for outpatient settings that*
12 *offer in vitro fertilization or assisted reproduction technology that*
13 *it deems necessary.*

14 ~~SEC. 7.~~

15 *SEC. 6.* Section 1248.2 of the Health and Safety Code is
16 amended to read:

17 1248.2. (a) Any outpatient setting may apply to an
18 accreditation agency for a certificate of accreditation. Accreditation
19 shall be issued by the accreditation agency solely on the basis of
20 compliance with its standards as approved by the board under this
21 chapter.

22 (b) The board shall obtain and maintain a list of all accredited,
23 certified, and licensed outpatient settings from the information
24 provided by the accreditation, certification, and licensing agencies
25 approved by the board, and shall notify the public whether a setting
26 is accredited, certified, or licensed, or the setting's accreditation,
27 certification, or license has been revoked, suspended, or placed on
28 probation, or the setting has received a reprimand by the
29 accreditation agency.

30 ~~SEC. 8.~~

31 *SEC. 7.* Section 1248.25 of the Health and Safety Code is
32 amended to read:

33 1248.25. If an outpatient setting does not meet the standards
34 approved by the board, accreditation shall be denied by the
35 accreditation agency, which shall provide the outpatient setting
36 notification of the reasons for the denial. An outpatient setting may
37 reapply for accreditation at any time after receiving notification
38 of the denial. The accrediting agency shall immediately report to
39 the board if the outpatient setting's certificate for accreditation has
40 been denied.

1 ~~SEC. 9.~~

2 *SEC. 8.* Section 1248.35 of the Health and Safety Code is
3 amended to read:

4 1248.35. (a) Every outpatient setting which is accredited shall
5 be periodically inspected by the Medical Board of California or
6 the accreditation agency. The frequency of inspection shall depend
7 upon the type and complexity of the outpatient setting to be
8 inspected. Inspections shall be conducted no less often than once
9 every three years and as often as necessary to ensure the quality
10 of care provided. The Medical Board of California or the
11 accreditation agency may enter and inspect any outpatient setting
12 that is accredited by an accreditation agency at any reasonable
13 time to ensure compliance with, or investigate an alleged violation
14 of, any standard of the accreditation agency or any provision of
15 this chapter.

16 (b) If an accreditation agency determines, as a result of its
17 inspection, that an outpatient setting is not in compliance with the
18 standards under which it was approved, the accreditation agency
19 may do any of the following:

20 (1) Issue a reprimand.

21 (2) Place the outpatient setting on probation, during which time
22 the setting shall successfully institute and complete a plan of
23 correction, approved by the board or the accreditation agency, to
24 correct the deficiencies.

25 (3) Suspend or revoke the outpatient setting's certification of
26 accreditation.

27 (c) Except as is otherwise provided in this subdivision, before
28 suspending or revoking a certificate of accreditation under this
29 chapter, the accreditation agency shall provide the outpatient setting
30 with notice of any deficiencies and the outpatient setting shall
31 agree with the accreditation agency on a plan of correction that
32 shall give the outpatient setting reasonable time to supply
33 information demonstrating compliance with the standards of the
34 accreditation agency in compliance with this chapter, as well as
35 the opportunity for a hearing on the matter upon the request of the
36 outpatient center. During that allotted time, a list of deficiencies
37 and the plan of correction shall be conspicuously posted in a clinic
38 location accessible to public view. The accreditation agency may
39 immediately suspend the certificate of accreditation before
40 providing notice and an opportunity to be heard, but only when

1 failure to take the action may result in imminent danger to the
2 health of an individual. In such cases, the accreditation agency
3 shall provide subsequent notice and an opportunity to be heard.

4 (d) If the board determines that deficiencies found during an
5 inspection suggests that the accreditation agency does not comply
6 with the standards approved by the board, the board may conduct
7 inspections, as described in this section, of other settings accredited
8 by the accreditation agency to determine if the agency is accrediting
9 settings in accordance with Section 1248.15.

10 (e) Reports on the results of each inspection shall be kept on
11 file with the board or the accrediting agency along with the plan
12 of correction and the outpatient setting comments. The inspection
13 report may include a recommendation for reinspection. All
14 inspection reports, lists of deficiencies, and plans of correction
15 shall be public records open to public inspection.

16 (f) The accrediting agency shall immediately report to the board
17 if the outpatient setting has been issued a reprimand or if the
18 outpatient setting's certification of accreditation has been
19 suspended or revoked or if the outpatient setting has been placed
20 on probation.

21 ~~SEC. 10.~~

22 *SEC. 9.* Section 1248.5 of the Health and Safety Code is
23 amended to read:

24 1248.5. The board shall evaluate the performance of an
25 approved accreditation agency no less than every three years, or
26 in response to complaints against an agency, or complaints against
27 one or more outpatient settings accreditation by an agency that
28 indicates noncompliance by the agency with the standards approved
29 by the board.

30 ~~SEC. 11.~~

31 *SEC. 10.* Section 1279 of the Health and Safety Code is
32 amended to read:

33 1279. (a) Every health facility for which a license or special
34 permit has been issued shall be periodically inspected by the
35 department, or by another governmental entity under contract with
36 the department. The frequency of inspections shall vary, depending
37 upon the type and complexity of the health facility or special
38 service to be inspected, unless otherwise specified by state or
39 federal law or regulation. The inspection shall include participation
40 by the California Medical Association consistent with the manner

1 in which it participated in inspections, as provided in Section 1282
2 prior to September 15, 1992.

3 (b) Except as provided in subdivision (c), inspections shall be
4 conducted no less than once every two years and as often as
5 necessary to ensure the quality of care being provided.

6 (c) For a health facility specified in subdivision (a), (b), or (f)
7 of Section 1250, inspections shall be conducted no less than once
8 every three years, and as often as necessary to ensure the quality
9 of care being provided.

10 (d) During the inspection, the representative or representatives
11 shall offer such advice and assistance to the health facility as they
12 deem appropriate.

13 (e) For acute care hospitals of 100 beds or more, the inspection
14 team shall include at least a physician, registered nurse, and persons
15 experienced in hospital administration and sanitary inspections.
16 During the inspection, the team shall offer advice and assistance
17 to the hospital as it deems appropriate.

18 (f) The department shall ensure that a periodic inspection
19 conducted pursuant to this section is not announced in advance of
20 the date of inspection. An inspection may be conducted jointly
21 with inspections by entities specified in Section 1282. However,
22 if the department conducts an inspection jointly with an entity
23 specified in Section 1282 that provides notice in advance of the
24 periodic inspection, the department shall conduct an additional
25 periodic inspection that is not announced or noticed to the health
26 facility.

27 (g) Notwithstanding any other provision of law, the department
28 shall inspect for compliance with provisions of state law and
29 regulations during a state periodic inspection or at the same time
30 as a federal periodic inspection, including, but not limited to, an
31 inspection required under this section. If the department inspects
32 for compliance with state law and regulations at the same time as
33 a federal periodic inspection, the inspection shall be done consistent
34 with the guidance of the federal Centers for Medicare and Medicaid
35 Services for the federal portion of the inspection.

36 (h) During a state periodic inspection of an acute care hospital,
37 including, but not limited to, an inspection required under this
38 section, the department shall inspect the peer review process
39 utilized by the hospital.

1 (i) The department shall emphasize consistency across the state
2 and *in* its district offices when conducting licensing and
3 certification surveys and complaint investigations, including the
4 selection of state or federal enforcement remedies in accordance
5 with Section 1423. The department may issue federal deficiencies
6 and recommend federal enforcement actions in those circumstances
7 where they provide more rigorous enforcement action.

8 ~~SEC. 12.~~

9 *SEC. 11.* No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.